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No. 99-901

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IN THE

Supreme Court of the United States

BRENTWOOD ACADEMY,
Petitioner,

v.

TENNESSEE SECONDARY SCHOOLS ATHLETIC ASSOCIATION AND RONNIE CARTER,
Executive Director and Individually,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF FOR *AMICI CURIAE* MEMPHIS UNIVERSITY SCHOOL, ST. AGNES ACADEMY, CHRISTIAN BROTHERS HIGH SCHOOL, HUTCHISON SCHOOL, HARDING ACADEMY, LAUSANNE COLLEGIATE SCHOOL, ST. MARY'S EPISCOPAL SCHOOL, BRIARCREST CHRISTIAN SCHOOL, EVANGELICAL CHRISTIAN SCHOOL, AND FIRST ASSEMBLY CHRISTIAN SCHOOL IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Supreme Court Rule 37.2, Memphis University School, St. Agnes Academy, Christian Brothers High School, Hutchison School, Harding Academy, Lausanne Collegiate School, St. Mary's Episcopal School, Briarcrest Christian School, Evangelical Christian School, and First Assembly Christian School make this motion to the Court for leave to file the attached *amici curiae* brief in support of petitioner, Brentwood Academy.[1] This case addresses whether the conduct of the Tennessee Secondary Schools Athletic Association ("TSSAA") is state action under 42 U.S.C.§ 1983 and the Constitution of the United States. The parties joining in as *amici curiae* are a number of independent schools located in the State of Tennessee who are members of the TSSAA, and who are affected by the Sixth Circuit's holding that the conduct of the TSSAA is not state action. *Amici curiae* are well-qualified to inform the Court of the importance of this case to a vital part of each school's curriculum.

This is a case of national significance, which has the potential to affect the constitutional rights of educational institutions and students in every state. In addition, the decision of the United States Court of Appeals for the Sixth Circuit in this case conflicts with every other federal circuit and State Supreme Court that has addressed this important constitutional question regarding state action. Further, the Sixth Circuit's decision is in conflict with relevant decisions of this Court.

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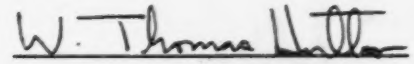
[1] Counsel for petitioner consented to the filing of the *amici curiae* brief, but counsel for respondents declined.

Amici curiae submit that they have the perspective to inform the Court about the significance of this case, and that the accompanying brief will aid the Court in its decision regarding Brentwood Academy's Petition for Writ of Certiorari. Accordingly, *amici curiae* request the Court to grant their motion and file the attached *amici curiae* brief.

Respectfully submitted,



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INTEREST OF *AMICI CURIAE*

Amici curiae in this case consist of a number of independent schools located in the State of Tennessee who are members of the Tennessee Secondary Schools Athletic Association ("TSSAA"), and who are affected by the Sixth Circuit's holding that the conduct of the TSSAA is not state action. *Amici curiae* have a strong interest in whether the actions of the TSSAA constitute state action. If this Court does not reverse the Sixth Circuit's holding, then Tennessee's schools and their students will be denied constitutional protection from the actions of the TSSAA, resulting in the TSSAA having the power to govern an important part of education – interscholastic athletics – with impunity.

SUMMARY OF THE ARGUMENT[2]

This is a case of national significance, which has the potential to affect the constitutional rights of educational institutions and students in every state. The vast majority of schools across the country emphasize the importance of athletics to education. The Tennessee State Board of Education (the "State Board"), first through custom and practice, then explicitly, then again through custom and practice, delegated the governance of this integral part of education to the TSSAA. The Sixth Circuit's decision that the conduct of the TSSAA is not state action conflicts with every other federal circuit and State Supreme Court that has addressed this important issue, and with the relevant decisions of this Court. Because of the pervasive involvement of public officials with every aspect of the TSSAA's actions, the

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[2] No counsel for any party authored this brief in whole or in part and no person or entity other than amici curiae and their members made a monetary contribution to the preparation or submission of this brief.

conduct of the TSSAA should be deemed to be state action under all of the tests used by this Court to make that determination.

ARGUMENT

REASONS FOR GRANTING CERTIORARI

This is a case of national significance in which the decision of the Sixth Circuit is in conflict with every other federal circuit and State Supreme Court that has addressed this important constitutional question. In addition, the Sixth Circuit's decision is in conflict with relevant decisions of this Court. Thus, this case satisfies the criteria for certiorari under Rule 10(a) of the Supreme Court of the United States, as discussed more fully below.

A. National Significance and Public Policy

1. Effects of the Sixth Circuit's Decision

This case has the potential to affect the constitutional rights of educational institutions and students in every state, making it a case of national significance. The most directly affected state is, of course, Tennessee. If this Court allows the Sixth Circuit's decision to stand, then the TSSAA's actions cannot be challenged under 42 U.S.C. § 1983, and the TSSAA member schools and their students will have no redress for conduct that would otherwise violate their constitutional rights. Without the ability to bring a constitutional challenge, the TSSAA member schools and their students are left with little or no recourse against the TSSAA.

Prior to the Sixth Circuit's decision, Tennessee's schools and students were afforded constitutional protection with respect to the regulation of interscholastic athletics. The Sixth Circuit's decision now allows the TSSAA to govern this important aspect of education in Tennessee without accountability. The TSSAA may exercise unfettered authority and control over secondary school athletics in Tennessee, without regard to the constitutional rights of member schools and their students. In effect, the TSSAA is given the authority to implement policy and to control this entire aspect of education in Tennessee. Just as the State of Tennessee is forbidden from exercising such authority and control without constitutional limitations, the TSSAA should also be subject to constitutional restraints.

The Sixth Circuit's decision also opens the door to challenges to the status of athletic associations in other states in the Sixth Circuit, as well as nationwide. Because high school interscholastic athletics in every state in the Sixth Circuit, and almost every state in the nation, are governed by similar associations, the effects of this decision are far-reaching.

2. Importance of Athletics to Education

The importance of athletics to education should not be underestimated. The TSSAA itself recognizes the importance of athletics as an integral part of education in its Constitution, which provides:

> Recognizing that the primary objective of all secondary schools is to educate youth, the TSSAA aims to co-ordinate the athletic and scholastic programs. The athletic field and the

> gymnasium are classrooms in which teaching is foremost in the development of character, integrity, sportsmanship, and team work. Although the athletic program is associated primarily with physical education and the scholastic program with mental education, one complements the other.

TSSAA Constitution, Art. 1, Section 2; Pet. App. 33-B.

The schools joining as *amici curiae,* as well as schools around the country, also recognize athletics as an essential component of education. In their handbooks, mission statements, and on their web pages, schools emphasize that athletics are an integral part of the education process. Listed below are excerpts from some of those handbooks, mission statements and web pages from schools around the country, including many of the *amici curiae*:

Memphis University School, Memphis, Tennessee

> At Memphis University School, the athletic program serves as a means to support and realize the mission of the school. As an extension of the classroom, athletics allows students to compete, to achieve goals, to become well-rounded young men of strong moral character, consistent with the school's Christian tradition. Athletics provides an opportunity to practice the principles of life, such as subjecting one's self to authority, working together as members of a team, and controlling the emotions that arise in competition. Athletic competition offers an arena for the demonstration of our commitment to excellence and our desire to succeed through individual, team, and program goals.

Memphis University School Coaches' Handbook, p. 1; App. 1-A.

Hutchison School, Memphis, Tennessee

> Hutchison School is dedicated to the parallel development of mind, body, and spirit as it educates young women for success in college and for lives of integrity and responsible citizenship. Hutchison's ultimate goal is to teach students to demand excellence from themselves in all that they endeavor to do. The athletic program is no exception in this regard. Hutchison School resolves to provide quality coaching, appropriate facilities, and well-supervised instruction to ensure an athletic program of the highest caliber for its young women.

Athletics, Hutchison School, *Hutchison School Athletic Philosophy* (visited December 27, 1999) <http://www.hutchisonschool.org/activities/athletics/index.htm>.

St. Agnes Academy, Memphis, Tennessee

> Athletic programs which are based on the teachings of Christ provide the student with opportunities for learning which foster positive attitudes about self and others. Good sportsmanship, honesty, integrity, and fairness characterize the athletic program at [St. Agnes Academy]. The dignity and uniqueness of each student is respected, and character formation will not be sacrificed for a winning season. The philosophy of the athletic program flows directly from the mission and philosophy of the School.

St. Agnes Academy Student Handbook, 1999-2000 School Year, *Athletics*, p.14; App. 1-B.

Lausanne Collegiate School, Memphis, Tennessee

> Lausanne Collegiate School is a coeducational college preparatory school that strives to educate students with a holistic approach that combines academic integrity with athletic perseverance. The holistic approach focuses not only on the mind of the child but the body and spirit in developing the total individual * * * *
>
> At Lausanne, the education of each individual is the primary responsibility and athletics play a vital role in that educational process. Athletics should be viewed as a co-curricular activity rather than extracurricular, where the development of the student is paramount. Athletics participation at Lausanne will promote and facilitate working together for a common purpose. This type of focus will help the student athlete to develop a better understanding of others, which in turn helps with interpersonal relationships * * * *

Lausanne Lynx Athletics Handbook, Introduction; App. 1-C.

Girls' Preparatory School, Chattanooga, Tennessee

> Giving our girls a well-rounded education is our first goal, and we certainly feel sports participation can play a vital tole. It's given me great personal satisfaction to see so many of our teams excel at a high level year after year, and to see individual girls grow into intelligent and confident young women who step up with enthusiasm to almost any challenge.

Comments of Stacy Hill, Athletic Director, Girls' Preparatory School (visited December 21, 1999) <http://www.gps.edu/Athletics/Athletics.htm#mission>.

The Haverford School, Haverford, Pennsylvania

> Athletics are a vital part of the curriculum of The Haverford School. As an extension of the academic classroom and traditional school day, many valuable lessons are learned through athletic participation. The learning objective of the athletic classroom is to foster an environment where young people reach their fullest potential intellectually, emotionally, and physically * * * * Providing a competitive program of interscholastic sports, * * * The Haverford School requires team participation throughout its middle and upper school curricula. Furthermore, the School strongly discourages boys from specializing in one particular sport. Rather, boys are encouraged to vary their athletic experiences in order to enhance diversity in learning. In addition to physical participation, students are also offered opportunities to contribute to teams in administrative capacities.
>
> As an extension of athletic cooperative learning, The Haverford School values the display of exemplary sportsmanship by its participants and spectators alike * * * * The athletic experience at The Haverford School is dedicated to teaching the principles of participation, excellence, discipline, loyalty, self-confidence, enthusiasm, and cooperative learning. All constituencies of The Haverford School community embrace these qualities.

The Haverford School, *Athletics* (visited December 27, 1999) <http:// www.haverford.org/htmfiles/1athletic.html>.

The Fessenden School, West Newton, Massachusetts

> Athletics are an essential part of a boy's Fessenden School experience.
>
> * * *
>
> We think some of the most important lessons to be learned within the athletic environment at all grade levels are the value of teamwork and cooperative group behavior. Team sports help our boys learn to give for the good of all and to work cohesively as a unit. The pride we share in our students' athletic accomplishments shows in both winning records and winning smiles!
>
> Since many of our coaches are also faculty members, the values that are stressed in the classroom are also applied to athletics. Coaches apply the same expectations of sportsmanship, respect for others, and fair play on the playing field that exist in all other areas of the school.

The Fessenden School, *Athletics* (visited December 27, 1999) <http://www.fessenden.org/pages/athleti.html>.

Delbarton School, Morristown, New Jersey

> Sports at Delbarton are an integral part of student and school life. The school holds the traditional belief that much can be learned about cooperation, competition, and character through athletic participation, and it seeks to honor this commitment by sponsoring a variety of sports on all levels. * * * * Most boys participate on one or more interscholastic teams.

Delbarton School, *Athletics* (visited December 27, 1999) <http://www.delbarton.org/athletics/Index.htm>.

Burr and Burton Academy, Manchester, Vermont

> In keeping with Burr and Burton's dedication to a well-rounded education, athletics and physical fitness are an important component of every student's school experience. In addition to physical education classes, students have the opportunity to participate in sixteen interscholastic sports programs.

Burr and Burton Academy, *Athletics at Burr and Burton* (visited December 27, 1999) <http://www.bbsvt.org/Athletics/Athlet.html>.

Boys' Latin School of Maryland, Baltimore, Maryland

> Over 80 percent of Upper School students participate on an interscholastic team.
>
> * * *
>
> Sports are more than contests at Boys' Latin. They give boys a chance to learn fair play. Finishing what you start. Good sportsmanship, no matter the outcome. Giving everyone a chance to play. Encouraging the weak and striving to be as good as the strong, within one's ability.

Boys' Latin School of Maryland, *Athletics* (visited December 27, 1999) <http://www.md.net/bl/frames.htm>.

The Albany Academy, Albany, New York

> The Albany Academy's tradition of athletic excellence is a direct result of our commitment to make respect for physical health and strength an integral part of every boy's educational experience.

> A young person's intellectual and character development is enhanced by the athletic experience. It presents boys with the opportunities to grow by testing their will, strength, skill, endurance, and the ability to function in a team environment. The Academy believes in athleticism as a fundamental building block of personal growth.

The Albany Academy, *Athletics* (visited December 27, 1999) <http://www.albany-academy.org/athletics/athletics.htm>.

Valley Forge Military Academy & College, Wayne, Pennsylvania

> As a means to promote the whole person concept, the Academy offers a wide variety of sports to its cadets. The goal of the Academy is to encourage the physical development and leadership qualities necessary for success in today's competitive world market. Cadets are encouraged to participate in interscholastic events, and many participate in intramural or "club" sports programs such as rugby.

Valley Forge Military Academy & College, Activities, *Athletics Information Page* (visited December 27, 1999) <http://www.vfmac.edu/sports/sports.html>.

These are just a few examples from schools around the country that operate under the premise that athletics constitute an integral part of education.

B. State Action

1. Federal Circuit Courts

As Judge Merritt stated in his dissent from the Order denying Brentwood Academy's petition for rehearing *en banc*, the Sixth Circuit's decision is

> inconsistent with the basic authorities on state action, and with well-established legal theory underlying their holdings . . . . We have created an unnecessary conflict in the circuits on an important question of constitutional law. The conflict will have to be remedied now by the Supreme Court.

Pet. App. 6-C. As discussed in Petitioner's brief, the holding of the Sixth Circuit is inconsistent with the decisions of the Third, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits. *See* Pet. Brief pp. 8-10.

2. State Supreme Courts

The decision of the Sixth Circuit also conflicts with the State Supreme Court decisions that have addressed the issue. *See* Pet. Brief p. 10.

3. Supreme Court of the United States

The Sixth Circuit's decision is in conflict with the decisions of this Court regarding state action, notably *NCAA v. Tarkanian*, 488 U.S. 179, 193 n.13 (1988), which cited approvingly two cases in which high school athletic associations were held to be state actors. In holding that the

NCAA was not a state actor because of the national character of the organization, this Court stated that "[t]he situation would, of course, be different if the membership consisted entirely of institutions located within the same State, many of them public institutions created by the same sovereign." *Id.* (citations omitted). The TSSAA fits perfectly within this description – it is an organization in which the membership consists entirely of institutions located within the State of Tennessee, most of which are public schools created by the State. Under *Tarkanian's* footnote 13, as well as other decisions of this Court relating to state action, the TSSAA's actions fall squarely into the realm of state action.

a. Undisputed Facts

The District Court found the following facts to be undisputed:

- The TSSAA is an association of public, independent and parochial secondary schools from across the State of Tennessee, which is comprised of 290 public schools, and 55 independent and parochial schools. Pet. App. 4-B.
- Public high schools compose 84% of the voting membership of the TSSAA, and independent and parochial schools compose 16% of the voting membership of the TSSAA. Pet. App. 5-B.
- The purpose of the TSSAA is "to stimulate and regulate the athletic relations of the secondary schools in Tennessee." Pet. App. 5-B.
- By electing to be a member of TSSAA, each member school agrees to abide by the Constitution and By-laws of the TSSAA. Pet. App. 5-B.

- The rules and regulations of the TSSAA are enacted by its Legislative Council, a nine-member body composed of high school principals, assistant principals or qualified superintendents elected by popular vote in each of nine electoral districts. Pet. App. 5-B.
- The administrative authority of the TSSAA is vested in a Board of Control, composed of nine members who are high school principals or superintendents, similarly elected by popular vote. Pet. App. 5-B.
- All of the voting members of the Legislative Council and the Board of Control in 1997 were public high school administrators. None of the voting members of the Legislative Council and the Board of Control in 1997 were principals of independent or parochial schools. Pet. App. 5-B.
- The membership of the TSSAA is primarily public schools, and the governance of the TSSAA is exclusively by public officials. Pet. App. 28-B.
- The TSSAA rules provide that public school principles and coaches submit certain reports to the TSSAA on a regular basis. Principals, who are state-paid, state-supervised, public officials, are responsible to the TSSAA in all matters pertaining to athletic relations of their schools. Pet. App. 32-B.
- A substantial portion of the TSSAA's annual revenue comes from tournament receipts from athletic tournaments of member schools. The majority of athletic contests between member schools are played in public, state-owned facilities. The TSSAA directly dictates the parameters of all post-season play for public schools. Pet. App. 32-B, 33-B.
- Employees of the TSSAA are covered by Tennessee's retirement system, and by statute are included within the definition of "teachers" for that purpose. Pet. App. 33-B.

- For a public school to be a member of the TSSAA, its coach must have a Tennessee teaching license, must be a full-time employee of the State Board and must be paid entirely from funds approved by the State Board or the governing board of the school. Pet. App. 33-B.
- Students get academic credit for TSSAA activities. Pet. App. 34-B.
- Officials for athletic contests at TSSAA schools must be selected from the official TSSAA list and paid TSSAA-set fees. The TSSAA also sets ticket prices for all regional and state tournament games. Pet. App. 31-B, 32-B.
- Since 1925, the State Board has recognized the functions of the TSSAA in providing standards, rules and regulations of interscholastic competition in the public schools in Tennessee. In 1972, by rule, the State Board designated the TSSAA as "the organization to supervise and regulate the athletic activities in which the public junior and senior high schools of Tennessee participate on an interscholastic basis." Pet. App. 10-B.
- In 1972, the State Board approved the current rules and regulations of the TSSAA and reserved the right to review the appropriateness of any future changes. On several occasions in 1972 through 1992, the State Board reviewed and approved the TSSAA rules, including the Recruiting Rule at issue in this case. Pet. App. 10-B, 11-B.
- In a 1992 memorandum to the State Board, the TSSAA executive director stated: "This is somewhat ceremonial, though important as a means of reminding the world that the TSSAA works as an agent on behalf of the State Board of Education." Pet. App. 25-B.
- In a 1993 memorandum, the TSSAA executive director stated: "Competitive athletics is a big part of the high

school experience. The [TSSAA] manages these activities as sanctioned by the State Board of Education. This annual report keeps members informed of issues and changes in TSSAA policies." Pet. App. 25-B, 26-B.

- In 1995, the State Board amended its rule designating the TSSAA to govern athletic activity within Tennessee, and replaced it with a rule that stated that the State Board "recognizes the value of participation in interscholastic athletics and the role of the [TSSAA] in coordinating interscholastic athletic competitions. The State Board of Education authorizes the public schools of the state to voluntarily maintain membership in the [TSSAA]." Pet. App. 11-B.
- Although the language of the new rule was changed (apparently to avoid litigating a claim of state action) to no longer "designate" the TSSAA as the official organization for supervision and regulation of secondary school athletics, it clearly singled out the TSSAA by name to serve this function. More importantly, the conduct of the parties did not materially change after the rule was instituted. Pet. App. 26-B, 27-B.
- The State of Tennessee, first through custom and practice, then explicitly, then again through custom and practice, has recognized the TSSAA as the official body for the regulation and control of interscholastic athletics. Pet. App. 27-B.
- The TSSAA has the power to keep schools from competing against other schools. Pet. App. 32-B.
- The TSSAA is the only organization governing interscholastic athletics in the State of Tennessee. Pet. App. 28-B.

b. Law

This Court has used a variety of approaches to determine whether a party's conduct constitutes state action. These approaches include: (1) the nexus test of *Blum v. Yaretsky*, 457 U.S. 991 (1982) and *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974); (2) the joint participation/conspiracy/custom or usage analysis of *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970) and *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982); (3) the public function inquiry of *Terry v. Adams*, 345 U.S. 461 (1953) and *Marsh v. Alabama*, 326 U.S. 501 (1946); and (4) the symbiotic relationship test of *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961).

Under all the approaches set forth above, the "ultimate issue" to be determined is whether "the alleged infringement of federal rights" is "fairly attributable to the State." *See Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982) (citing *Lugar*, 457 U.S. at 937).

i. The Nexus Test

Under the nexus test, there must be a "sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." *Blum*, 457 U.S. at 1004 (citing *Jackson*, 419 U.S. at 351). In this case, there is a strong nexus between the actions of the TSSAA and the State. On one level, the State Board has turned over all of the regulation of interscholastic athletics to the TSSAA, routinely approved the TSSAA's rules, regulations and actions, and admittedly had the TSSAA act as its "agent." On another level, the vast majority of the TSSAA membership is made up

of public school officials (who are undeniably state actors) and who control, through popular vote, all of the TSSAA's decisions. Thus, all of the decisions, governance and actions of the TSSAA are inextricably intertwined with both the State Board and public officials, all of which are state actors.

ii. The Joint Participation/ Conspiracy/Custom or Usage Test

If a private party acts in joint participation or in a conspiracy with a state actor, or engages in actions that are mandated by the custom or practice of the State, then the private party's actions are considered state action. *See Adickes*, 398 U.S. at 152, 168; *Lugar*, 457 U.S. at 942 (1982). The TSSAA acts jointly with the State because the TSSAA is governed by pubic officials, and "[s]tate employment is generally sufficient to render the defendant a state actor." *See Lugar*, 457 U.S. at 936 n.18. "[T]he involvement of a state official . . . plainly provides the state action essential to show a direct violation of the petitioner's Fourteenth Amendment . . . rights, whether or not the actions of the [state official] were officially authorized, or lawful." *Adickes*, 398 U.S. at 152. Thus, there is direct participation between state actors and the TSSAA sufficient for a finding of state action.

In addition, first through custom and practice, then explicitly, then again through custom and practice, the State Board delegated its authority over athletics to the TSSAA. Pet. App. 27-B. Thus, the TSSAA is also a state actor as a result of the customs and practices of the State of Tennessee.

iii. The Public Function Analysis

The public function analysis requires that a private entity be serving a "public function" in order to find state action. This Court has held that the question is whether the "function" performed has been "traditionally the exclusive prerogative of the State." *Jackson,* 419 U.S. at 353. As the exclusive organization governing interscholastic athletics, the TSSAA has performed a function traditionally reserved to the State: namely, the supervision and regulation of the athletic activities of the public junior and senior high schools in Tennessee.[3]

Since 1925, the State Board has recognized the TSSAA as the governing body for interscholastic competition in the public schools in Tennessee. The TSSAA admitted that it is the only organization governing interscholastic athletic contests within Tennessee. Pet. App. 28-B. As recognized by the United States District Court for the Middle District of Tennessee, the TSSAA is thus performing a public function:

> The TSSAA was organized for the primary purpose of performing a public function. Its stated objective is to "stimulate and regulate the athletic relations of the secondary schools of Tennessee." The vast majority of the schools belonging to the association are public schools

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[3] Tennessee law requires that "[t]here shall be a local public school system operated in each county or combination of counties. There may be a local public school system operated in a municipality or special school district." Tenn. Code Ann. § 49-1-102(c). There is also a provision for a "local board of education" and a "superintendent or director." *Id.*

> constituting a part of the State's secondary school system.

Kelley v. Metropolitan County Bd. of Educ., 293 F. Supp. 485, 491 (M.D. Tenn. 1968).

Because the functions of the TSSAA are functions that have been traditionally and exclusively reserved to the State of Tennessee, the TSSAA should be held to be a state actor under the public function analysis.

iv. The Symbiotic Relationship Test

The symbiotic relationship test, which is closely related to the joint participation analysis, focuses on the links between the State and the private actor, and the benefits each derives from the other. *See Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 725 (1961) (finding that the State had "so far insinuated itself into a position of interdependence with [the private party] that [the State] must be recognized to be a joint participant in the challenged activity").

The District Court found "overwhelming evidence" of a "symbiotic relationship" between the TSSAA and the State of Tennessee. Pet. App. 31-B. As set forth above in the fact section of this brief, there is an undeniable ongoing financial and service relationship between the State and the TSSAA that justifies a finding of state action in this case.

The Sixth Circuit recognized that the type of symbiotic relationship between the State of Tennessee and the TSSAA was sufficient to establish state action in *Yellow Springs Exempted Village School Dist. Bd. of Educ. v. Ohio High*

School Athletic Ass'n, 647 F.2d 651, 653 (6th Cir. 1981), where it held that "OSHAA's character as a semi-official in its activities and its symbiotic relationship with the state" established state action. The Sixth Circuit cited the organization of competitions, setting of schedules, arrangement of places to play tournament games, prescription of uniform rules of play, power to sanction schools, requirement that a school must be accredited by the State Board of Education and that membership was a virtual necessity because no other organization provided interscholastic athletic programs as examples of the "symbiotic relationship" between OSHAA and the State. *Id.* Similar indications of a symbiotic relationship exist between the TSSAA and the State of Tennessee.

The conduct of the TSSAA is state action under any of the tests set forth above.

CONCLUSION

For the foregoing reasons, *amici curiae* request that Petitioner's Writ of Certiorari should be granted.

Respectfully submitted,

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MEMPHIS UNIVERSITY SCHOOL COACHES' HANDBOOK

PHILOSOPHY

At Memphis University School, the athletic program serves as a means to support and realize the mission of the school. As an extension of the classroom, athletics allows students to compete, to achieve goals, to become well-rounded young men of strong moral character, consistent with the school's Christian tradition. Athletics provides an opportunity to practice the principles of life, such as subjecting one's self to authority, working together as members of a team, and controlling the emotions that arise in competition. Athletic competition offers an arena for the demonstration of our commitment to excellence and our desire to succeed through individual, team, and program goals.

Winning is of great importance to the program; thus the goal is to have everyone give his best so that winning is possible. However, the student-athlete and coach should realize that there are two victories - the moral and the physical - and the program must not sacrifice the moral victory to gain a physical victory. The goal should be to attain the moral victory at each practice and competition. The physical victory should be the next goal, and its meaning is made valid through the moral victory.

Coaches, teachers, and administrators are the role models for student-athletes. A coach should always be enthusiastic and prepared for each day's practice and have a schedule of events to help all student-athletes reach their

potential. A coach should be the leader in exercising self-control and displaying leadership.

A student-athlete has a responsibility to maintain high standards of personal integrity, leadership, and athletic accomplishment. These qualities are difficult to maintain unless the athlete accepts his leadership responsibility and constantly portrays those high standards. An athlete is looked upon as a leader by the school community and is constantly observed. A student-athlete may often feel pressure to perform for friends and family, but this motivation will not enhance an athletic program. A student-athlete should develop an inner desire to reach his fullest potential. The goal and motivation must be for each athlete to perform at his personal best to help the team achieve its goals.

ST. AGNES ACADEMY
ST. DOMINIC SCHOOL

ATHLETICS

Athletic programs which are based on the teachings of Christ provide the student with opportunities for learning which foster positive attitudes about self and others. Good sportsmanship, honesty, integrity, and fairness characterize the athletic program at SAA-SDS. The dignity and uniqueness of each student is respected, and character formation will not be sacrificed for a winning season. The philosophy of the athletic program flows directly from the mission and philosophy of the School.

Athletic directors and coaches determine the focus of the athletic program. The School selects men and women of upright character and integrity to serve as coaches, since they serve as role models for the student with whom they work.

A SAA-SDS Booster Club was founded in 1995 to assist efforts in promoting support for student athletes on the campus. All parents of children in grades 5-12 are urged to be active members of this organization. The Booster Club operates under the direction of the Athletic Director, and annual dues are minimal.

LAUSANNE LYNX ATHLETICS HANDBOOK

INTRODUCTION

Lausanne Collegiate School is a coeducational college preparatory school that strives to educate students with a holistic approach that combines academic integrity with athletic perseverance. The holistic approach focuses not only on the mind of the child but the body and spirit in developing the total individual. Lausanne emphasizes knowledge, truth and honor in every aspect of our daily lives; it is with these principles in mind that we can live a successful and meaningful life.

At Lausanne the education of each individual is the primary responsibility and athletics play a vital role in that educational process. Athletics should be viewed as a co-curricular endeavor rather than extracurricular, where the development of the student is paramount. Athletics participation at Lausanne will promote and facilitate working together for a common purpose. This type of focus will help the student athlete to develop a better understanding of others, which in turn helps with interpersonal relationships. The role of the coach in Lausanne's athletic department is vital and should be based on respect: respect for him/herself and respect for the student athlete.